

Course Syllabus
Real Estate Law MBAX 6855 - Fall Semester, 2008
Leeds School of Business
University of Colorado – Boulder

Instructor: David B. Agnew, Esq.
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Office Hours: Wednesdays, prior to, or immediately after, class. By appointment only.

Description and Objectives: This course is intended to cover many of the basic legal concepts relevant to, and inherent in, the real estate business. While many traditional real property law concepts will be covered in the course, the course is intended to introduce the student to the transactional legal aspects of the real estate business, including acquisition, disposition, development, investment, management, leasing and workouts, including tax implications. At the conclusion of the course, the student is expected to have acquired a basic understanding of these principles so that the student will have the ability to function with respect to these matters in many of the various aspects of the real estate business. In order to facilitate this process, examples and cases will be utilized in order to illustrate the principles being covered.

Materials: Materials for the course will be distributed periodically throughout the semester in electronic and loose-leaf form. In addition, selected readings and guest lecturers will add to the course content. It is expected that selected course materials will be available on-line during the semester at the course website.

Grading: The student's understanding of the course materials will be evaluated by a Mid-Term examination (30%) and a Final examination (50%). Class participation will be expected and will factor into final grades (20%). In the event attendance at the Mid-Term Examination is excused in advance, a make-up examination time will be scheduled as promptly as is possible by the Instructor. Letter grades will be based on the standard University grading scale.

Attendance: Attendance is expected as is preparation to discuss any materials assigned for the class. However, it is not necessary to explain absences from class.

Disability Statement/Special Accommodations: If you qualify for accommodations because of a disability, a letter from the University Disability Services must be submitted to me in a timely manner so that your needs may be addressed. Determination of accommodations based on documented disabilities is made by the University Disability Services. Campus policy regarding religious observances requires that faculty make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. Accordingly, special accommodations for religious observances must be requested at least two weeks in advance in order for reasonable accommodation to be made.

Honor Code: The Honor Code applies to this Class. All students at the University of Colorado at Boulder are responsible for knowing and adhering to the academic integrity policy of this institution. Violations of this policy may include: cheating, plagiarism, aid of academic dishonesty, fabrication, lying, bribery, and threatening behavior. All incidents of academic misconduct shall be reported to the Honor Code Council (honor@colorado.edu; 303-725-2273) Students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member and non-academic sanctions (including but not limited to university probation, suspension, or expulsion). Other information on the Honor Code can be found at <http://www.colorado.edu/policies/honor.html> .

Classroom Behavior: Students and faculty each have responsibility for maintaining an appropriate learning environment. Students who fail to adhere to such behavioral standards may be subject to discipline. Faculty has the professional responsibility to treat all students with understanding, dignity and respect, to guide the classroom discussion and to set reasonable limits on the manner in which they and their students express opinions. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

Discrimination and Sexual Harassment: The University of Colorado at Boulder policy on Discrimination and Harassment (<http://colorado.edu/policies/discrimination.html>), the University of Colorado policy on Sexual Harassment and the University of Colorado policy on Amorous Relationships apply to all students, staff and faculty. Any student, staff or faculty member who believes s/he has been the subject of discrimination or harassment based upon race, color, national origin, sex, age, disability, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-5550. Information about the ODH and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at <http://www.colorado.edu/odh>.

Questions and Discussion: Questions and discussion are always encouraged during class. In the event a student has additional questions or wishes further discussion or explanations of course material, an appointment for discussion during office hours is the preferred method. Office Hours appointments can be scheduled by E-Mail. Generally, questions and commentary by E-Mail is discouraged.

Changes and Modifications to Class Content: The Instructor reserves the unilateral right to change and modify the course content during the semester to reflect his interpretation of the needs of the students.

Course Outline: The outline of the Course is as follows:

September 10, 2008

1. **Introduction & Orientation Matters**
 - a. Glossary, web-sites, citations, lawsuits.
2. **Interests in Real Estate #1**
 - a. Freehold and Non-Freehold Estates
 - i. Fee Simple Absolute
 - ii. Fee Simple Defeasible
 - iii. Present/Future Interests
 - iv. Life Estate
 - v. Reversions/Remainders/Executory Interests
 - vi. "Complications"
 - b. Concurrent Estates
 - i. Joint Tenancy
 - ii. Tenancy in Common
 - iii. Tenancy by Entirety
 - iv. Rights/Obligations between Co-Tenants
 - v. Community Property
 - vi. Condominiums & Cooperatives
 - vii. Townhouses
 - viii. Time Share, Fractional and Vacation Clubs
 - c. Leasehold Estates
 - i. Estate for Years
 - ii. Periodic Tenancy
 - iii. Tenancy at Will/Sufferance
 - d. "Other Rights"
 - i. Air/Light/View Rights
 - ii. Subsurface Rights
 - iii. Water Rights

September 17, 2008

1. Interests in Real Estate #2

- e. Non-Possessory Estates
 - i. Easements
 - ii. Profits & Licenses
 - iii. Restrictive Covenants
- f. Fixtures
- g. Liens
 - i. Types of Liens
 - ii. Creation of Liens
 - iii. Priority of Liens
 - iv. Lis Pendens
- h. Protection of Property Rights
 - i. Trespass
 - ii. Nuisance
- i. Damages For Injury to Real Property
- j. Land Owner Liability
- k. Adverse Possession

September 24, 2008

1. Sources of Law Relevant to Real Estate

- a. Common Law
- b. Constitution
- c. Statutes
- d. Administrative Regulations
- e. Case Law

2. Governmental Regulation

- a. Public Policy vs. Private Rights (i.e. the “Police Power”)
- b. Zoning & Variances
- c. Building Permits – rights and vesting
- d. Environmental Regulation
- e. American with Disabilities Act (“ADA”)
- f. Fair Housing Laws
- g. Interstate Land Sales Full Disclosure Act
- h. Truth in Lending Act/Regulation Z
- i. Real Estate Settlement Procedure Act (RESPA)
- j. Colorado Common Ownership Interest Act
- k. Historic Designations
- l. Conservation Easements
- m. Exactions, Impact Fees and Development Agreements

3. Private Regulation

- a. Covenants/Deed Restrictions

October 1, 2008

1. Describing Interests in Real Estate

- a. Surveys
- b. Legal Descriptions

2. Transfer of Interests in Real Estate - Deeds

3. Protection of Title

- a. Title Insurance
 - i. Policy Types and Terms
 - ii. Title Insurance Commitment
 - iii. Exceptions and Endorsements
- b. Title Abstracts and Torrens Certificates
- c. Quiet Title Actions

October 8, 2008

1. The Acquisition Process

- a. Controlling the Deal

- i. Confidentiality Agreements
 - ii. Letters of Intent & Term Sheets
 - iii. Options
 - iv. Rights of First Refusal/Rights of First Offer
- b. Brokers
 - i. The Broker's Role
 - ii. Types of Broker Relationships, Duties and Responsibilities
 - iii. Listing Agreement

October 15, 2008

- 1. **Mid-Term Examination**

October 22, 2008

- 1. **The Contract**

- a. Reason For Contract ("Allocation of Risk")
- b. Types of Contracts
- c. Offer and Acceptance
- d. Consideration, Price & Terms
- e. Covenants, Representations and Warranties, Indemnities
- f. Conditions & Contingencies
- g. Assignment & Third Party Beneficiaries
- h. Duty to Perform/Discharge of Duty
- i. Breach
- j. Remedies
- k. Mediation & Arbitration
- l. Defenses
- m. Contract Construction & Interpretation

October 29, 2008

- 1. **Debt Financing**

- a. Loan Application and Commitment
- b. The Mortgage
 - i. Title vs. Lien Theory
 - ii. Creation of Mortgage
 - iii. Types of Mortgage
 - iv. Terms of Mortgage
 - v. Property covered by Mortgage
 - vi. Transfers and Assignments
 - vii. Satisfaction
 - viii. Foreclosure
- c. Deeds of Trust
- d. Alternative Methods of Financing
 - i. Installment Contracts
 - ii. Participating Mortgages
 - iii. Wrap-around Mortgages
 - iv. Convertible Mortgages
 - v. Lease/Purchase Agreements
 - vi. Sale/Leasebacks
- e. Securitized Financing
 - i. Collateralized Mortgage Backed Securities ("CMBS")
 - ii. Mezzanine Financing & Credit Enhancement

November 5, 2008

- 1. **Equity Financing**

- a. Partnerships/Joint Ventures/Syndications
 - i. Terms
 - ii. Rights and Remedies
- b. Participating Management/Development Agreements
- c. Structuring the Financing – Debt and Equity

November 12, 2008

1. **Closing Transactions**
 - a. Parties
 - b. Location
 - c. Closing Checklists
 - d. Attorney's Opinions
 - e. Title Matters
 - f. Satisfaction of Conditions & Contingencies
 - g. Prorations
 - h. Transfer of Funds
 - i. Post Closing Matters
 - j. Escrow Closings
2. **Development of a Project**
 - a. Typical Parties
 - b. Development Agreements
 - c. Architectural Agreements – AIA
 - d. Construction Contracts

November 19, 2007

1. **Management, Leases & Leasing**
 - a. Property Management Agreements
 - i. Typical Terms and Conditions
 - ii. Hotels
 - b. Commercial Leases
 - i. Office Lease
 - ii. Retail Lease
 - iii. Industrial Lease
 - iv. Apartment Lease
 - v. Lenders and Leases
 - vi. Tenant Defaults

November 26, 2007 – Fall Break

December 3, 2007

1. **Workouts, Foreclosures & Bankruptcy**
 - a. Foreclosure
 - i. Judicial
 - ii. Power of Sale (Deed of Trust)
 - iii. Election of remedies
 - iv. Deficiencies – legal issues & practical considerations
 - b. Workouts
 - i. Analysis of extent and cause of default
 - ii. Available Assets
 - iii. Single Purpose Entities
 - iv. Restructuring the Financing
 - v. Lender and Third Party Liability
 - vi. Dynamics of the Workout Negotiation
 - c. Bankruptcy
 - i. Voluntary/Involuntary
 - ii. Purposes – automatic stay/reorganization or liquidation
 - iii. Business Impacts
 - iv. Concepts applicable in reorganization and liquidation
 - a. Stay
 - b. Avoiding Powers
 - i. Preferences
 - ii. Fraudulent Transfers
 - iii. Strong-arm
 - c. Leases and Contracts
 - i. Assumption and Rejection

- ii. Treatment of Claims
- d. Reorganization
 - i. Process/Confirmation Standards/Feasibility
 - ii. Committees
 - iii. Plan Proposal
 - iv. Secured/unsecured Claims
 - v. Equity

December 10, 2007

1. Tax Matters

- a. Overview of Taxation in the United States
 - i. Federal Taxes – Income, Estate, Gift & Excise Taxes
 - ii. State Taxes – Income, Inheritance & Sales Taxes, TABOR
 - iii. Local Taxes – *Ad Valorum* Taxes on Real Estate and Personal Property, Sales Tax, Special District Taxes
- b. Federal Tax Aspects of Real Estate Ownership
 - i. Form of Ownership Affects Taxation – Corporations, “S” Corporations, Partnership or Limited Liability Company, Co-Tenancy or Individual Ownership
 - ii. Operation of Real Estate
 - a. Income and Expenses
 - b. Depreciation
 - c. Tax treatment of Passive Investors
 - d. Tax aspects of financing and refinancings
 - e. Leasing transactions
 - i. Treatment of Lease Payments
 - ii. Acquisition and disposition of leasehold estates
 - iii. Leasehold improvements and additions
 - iii. Taxable Dispositions of Real Estate
 - a. Tax Basis
 - b. Capital Gain vs. Ordinary Income
 - i. Dealer vs. Investor status
 - ii. Capital Gain techniques
 - iii. Installment Sales – Seller Financing
 - iv. Gifts and Conservation Easements
 - iv. Tax-Deferred Dispositions
 - a. Section 1031 Exchanges
 - b. Involuntary Conversions
 - c. Sale of personal residence
 - v. Estate and Gift Tax Considerations in Real Estate Ownership and Operation
- c. State and Local Taxation
 - i. *Ad Valorum* Taxes
 - a. Valuation
 - b. Assessment
 - c. Protest and Collection
 - ii. Special Districts
 - a. Taxing Powers of Special Districts
 - b. Tax Aspects of Special District Financing
 - i. Proceeds of Bond Sales
 - ii. Retention of Bonds by Developer or Investor

FINAL EXAM

1. Date, Time and Location To Be Determined.